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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC CORPORATION, a  
Delaware Corporation, BOSTON SCIENTIFIC  
SCIMED, INC., a Minnesota Corporation, and  
FORTIS ADVISORS LLC, as Securityholder  
Representative for the Former Securityholders  
of nVision Medical Corporation, a Delaware  
Corporation,

Plaintiffs,

vs.

BIOCARDIA, INC., a Delaware Corporation

Defendant.

Case No.: 3:19-cv-05645-VC

(Related Case No. 3:20-cv-02829-VC)

**JOINT REPORT REGARDING ADR**

Hon. Vince Chhabria

**JURY TRIAL DEMANDED**

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BIOCARDIA, INC.,

Counterclaimant,

vs.

BOSTON SCIENTIFIC CORPORATION,  
BOSTON SCIENTIFIC SCIMED, INC.,  
FORTIS ADVISORS LLC, AND SURBHI  
SARNA,

Counterdefendants.

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Pursuant to the Court’s General Order for Pending Civil Cases (Dkt. 97) dated July 29, 2020, BioCardia, Inc. (“BioCardia”), Boston Scientific Corporation and Boston Scientific Scimed, Inc. (collectively, “Boston Scientific”), Fortis Advisors LLC (“Fortis”), and Surbhi Sarna submit the following Joint Report Regarding ADR.

#### **I. STATUS OF CASE**

The parties appeared before the Court on July 16, 2020 and July 23, 2020 for a combined joint status conference and hearing on the motions then pending in the matters of *Boston Scientific Corporation, et al. v. BioCardia, Inc.*, 3:19-05645; *BioCardia, Inc. v. nVision Medical Corporation*, 3:20-cv-02829 (“BioCardia Matters”).

Following the hearing, as to this case, the Court granted Surbhi Sarna’s motion to dismiss BioCardia’s amended counterclaims as to Count I, but denied as to Counts II and III, and granted Surbhi Sarna’s unopposed motion to strike. (Dkt. 95 at 1.) The Court granted BioCardia’s motion to amend its answer and counterclaims “to include the additional trade secrets identified in that motion.” (*Id.*) The Court stated that “[l]eave to file an amended answer and counterclaims in the first lawsuit is limited to the two matters just discussed: bolstering the allegations regarding correction of inventorship and including allegations regarding the additional trade secrets. No additional parties, claims, or allegations may be inserted.” (*Id.* at 2.) The Court denied BioCardia’s motion to consolidate the BioCardia Matters without prejudice until the pleadings are settled in the BioCardia Matters. (*Id.*) The Court also stayed discovery in the BioCardia Matters until the pleadings are settled. (*Id.*)

BioCardia filed a Second Amended Answer and Counterclaims on August 20, 2020. (Dkt. 99.) Responses to BioCardia's Second Amended Answer and Counterclaims are currently due on September 3, 2020.

## **II. STATUS OF SETTLEMENT DISCUSSIONS AND ADR**

Pursuant to the Court's General Order for Pending Civil Cases (Dkt. 97), on August 14, 2020, the parties met and conferred to discuss the potential for case resolution and to discuss whether it would be productive to schedule another formal mediation at this time.

After meeting and conferring, the parties agree that settlement discussions are not likely to be productive at this time. The parties conducted private mediation in January 2020 before the Honorable Magistrate Judge Edward A. Infante (Retired), but the mediation ended with the parties at an impasse. The parties held subsequent settlement discussions, but those too were not productive. During the parties' meet and confer under General Order for Pending Civil Cases (Dkt. 97), it was clear that the parties are still at an impasse. Accordingly, while the parties remain open to additional settlement discussions and/or mediation at a later date, the parties do not believe that such discussions would be productive at this time. The parties also respectfully submit that they do not currently require assistance from a magistrate judge or the Court's ADR program.

## **III. CERTIFICATION OF COUNSEL**

Counsel for Boston Scientific, BioCardia, Fortis, and Surbhi Sarna herein certify that they provided the Court's General Order for Pending Civil Cases (Dkt. 97) dated July 29, 2020 to their respective clients.

Dated: August 26, 2020

**FAEGRE DRINKER BIDDLE & REATH LLP**

By: */s/Timothy E. Grimsrud*

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Dated: August 26, 2020

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Dated: August 26, 2020

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**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer attests that the concurrence in the filing of this document has been obtained from each of the above signatories.

By: */s/ Timothy E. Grimsrud*

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